THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE
ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MARY F McTIGUE
DIRECTOR

August 18, 1992
AO-92-04B

Representative Peter Forman
State House
Room 124
Boston, MA 02133

Re: Advisory Opinion 92-04

Dear Representative Forman:

This letter is in response to your April 21, 1992, letter as well as Stephen C. Meyers April 22, 1992 letter. Both letters seek clarification of certain matters discussed in the above referenced advisory opinion. I hope that this advisory opinion will help clarify the issue addressed in AO-92-04 for you and Mr. Meyers.

In AO-92-04, this Office advised, in pertinent part:

> Although section 6 provides no specific limitations on campaign finance contributions from candidate committees to PAC committees[1] . . . candidate committees should, in most cases, limit contributions to any one PAC to $100 in each calendar year and limit aggregate contributions to all PACs to $1,500 in each calendar year unless the candidate committee is able to demonstrate clearly that contributions beyond these limits are being made for the "enhancement of the political future" of the candidate on whose behalf it was organized. In addition, we believe it is unlikely that a candidate committee could, absent special circumstances, justify expenditures to any one PAC which exceed the $1,000.

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1. For purposes of AO-92-04 and this advisory opinion, political committees organized on behalf of an individual candidate are referred to as "candidate" committees and political committees not organized on behalf of an individual candidate are referred to as "multi-candidate" or "PAC" committees.

As noted in the advisory opinion, neither statute nor regulation expressly limit contributions from a candidate committee to a multi-candidate committee.[2] The only statutory and regulatory limitation is that all expenditures by non-constitutional candidate committees must be made for the enhancement of the candidate's political future. In the Office's opinion, such language places some limit on such contributions. For example, if it were concluded that such contributions were unlimited then a candidate leaving public office could direct his entire campaign balance to a multi-candidate committee supporting just two or three other candidates. It would be hard to argue that such contributions were designed to support his or her political future. Additionally, it would appear to contradict the purpose of the residual funds clause. Other examples are readily available and suggest legislative intent to place some limitation on such contributions.

Ultimately, the determination of whether an expenditure is consistent with the statutory standard must be done on a case by case basis. The purpose of AO-92-04 was to provide general guidance for candidate committees making contributions to multi-candidate committees since the Office had been getting a number of telephone questions on this matter, in addition to your request for an advisory opinion.

Candidate committees routinely receive requests for contributions from other candidate committees and multi-candidate committees, as well as various charitable organizations. Responding to such requests is likely to generate good will thereby enhancing the candidate's political future. In this context, the Office believes that the suggested limits of $100 and $1,500 are helpful and reasonable benchmarks for candidate committees. If greater amounts are going to be contributed by a candidate committee, it is essential for the candidate committee to have concluded that the particular level of contribution chosen clearly enhances the candidate's political future since that is the ultimate test established by the statute and because this Office will require such conclusion. Similarly, if contributions exceed $1,000 some set of special circumstances must exist to warrant

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2. In your letter you mention that the advisory opinion seems to contradict "the existing policy whereby a candidate committee can contribute up to $1,000 to a state [political party] committee . . . ." I am unsure to what policy you refer other than the guidance this Office provided in AO-92-04. Contributions to state committees are not expressly limited by statute or regulation but only by the statutory requirement that any expenditure by a non-constitutional candidate committee must be to "enhance the candidate's political future.

such a contribution. I note that AO-92-04 did not suggest that the circumstances need to be "unique" or "extraordinary."

In Mr. Meyer's letter he mentions two hypothetical situations involving contributions greater than $1,000 which he suggests meet the statutory criteria. In the first example, a candidate wants to reward twenty of his best volunteers by purchasing twenty $100 tickets to a fundraiser run by a multi-candidate committee where the volunteers will have the opportunity to meet major political figures and "go away even more eager to work for the candidate." In the second example, a candidate is running for an office involving endorsement by convention delegates, many of whom are elected officials. The candidate's committee wishes to contribute more than $1,000 to a multi-candidate committee that presumably contributes to elected officials who will be convention delegates in order to help win the convention's endorsement.[3] I would suggest that these examples are consistent with AO-92-04. Both examples, with the caveat set forth in footnote 2, involve "special circumstances" (not, I note, unique or extraordinary ones) which would, in the language of the advisory opinion, "justify" the expenditure.

In his letter, Mr. Meyers also asks how the Office will consider expenditures that political committees may have made in response to oral advice that may be inconsistent with AO-92-04. He also asks what the Office's criteria is for contributions over $100 as a result of AO-92-04. The answer to the first question is difficult. Oral advice is given on a continual basis to assist people in complying with campaign finance laws and the Office always takes into consideration a person's reasonable reliance on the Office's advice, even if the Office's advice changes as a result of changes in the law, regulations, or this Office's interpretation of the law. See AO-92-09. Sometimes, of course, advice is given based upon partial knowledge of the situation because information was withheld inadvertently or for other reasons. All of these factors as well as others would need to be weighed. Therefore,

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3. For the purpose of this example it must be assumed that the candidate committee is making a contribution to the multi-candidate committee based upon its previous history of contributions to the kind of candidate the PAC committee was organized to support. If the candidate committee has, for example, received a commitment from the multi-candidate committee to make contributions to a specific candidate, or candidates and/or political committees, such action would be a circumvention and violation of the contribution limitations set forth in M.G.L. c.55, s.6 as well as the "true origin" requirement set forth in M.G.L. c.55, s. 10.

although it is impossible for the Office to indicate what course of action might be taken in a future enforcement case, we would weigh a person or political committee's reasonable reliance on the Office's oral advice.

The simple answer to the second part of Mr. Meyers' questions is that the Office does not comment on its auditing practices or its criteria/standards. In our review of the reports filed with the Office, we consider various factors which may from time to time change and which are not matters of public record since they concern the Office's internal practices and/or investigative techniques.

In conclusion, we do not believe that AO-92-04 limits candidate committee contributions in a manner inconsistent with the statute; M.G.L. c.55 clearly looks to whether an expenditure enhances the political future of the candidate for whom his or her political committee was organized. Rather, AO-92-04, as well as this opinion, were issued in order to provide some written guidance in an area where no such written Office policy existed. We hope that the guidance and rules of thumb set forth in AO-92-04 and this opinion will serve as helpful benchmarks to candidate and multi-candidate committees.

I would, of course, be pleased to meet with you and/or Mr. Meyers regarding this matter if you have additional questions or comments.

Very truly yours,

Mary F. McTigue

Mary F. McTigue
Director

cc: Stephen C. Meyers